

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

ROBERT L. WIGGINS, JR., et al.,

Plaintiffs,

v.

FDIC, as Receiver of Superior Bank, et al.,

Defendants.

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Case No.: 2:12-cv-02705-SGC

ORDER

In accordance with the Memorandum entered contemporaneously herewith, counterclaim Defendant Peacock's Motion to Dismiss (Doc. # 117) is **GRANTED IN PART** and **DENIED IN PART**.

1. Counterclaim Defendant Peacock's Motion to Dismiss (Doc. # 117) is **GRANTED** as to Defendants Ellis and CCLLC's claims for fraudulent suppression, fraudulent misrepresentation, and unjust enrichment. These claims against counterclaim Defendant Peacock are **DISMISSED WITH PREJUDICE**.

2. Counterclaim Defendant Peacock's Motion to Dismiss (Doc. # 117) is **DENIED** as **MOOT** with respect to the breach of contract and breach of warranty deed claims. Counterclaim Defendant Peacock's Motion to Dismiss (Doc. # 117) is **DENIED** as to Defendant Ellis's breach of guaranty claim, and this claim will be allowed to proceed against her.


3. Plaintiffs' Motion to Dismiss (Doc. # 118) is **GRANTED IN PART** and **DENIED IN PART**. Plaintiffs' Motion to Dismiss (Doc. # 118) is **GRANTED** as to Defendants Ellis and CCLLC's fraudulent suppression and unjust enrichment claims, and these claims against Plaintiffs are **DISMISSED WITH PREJUDICE**.

4. Plaintiffs' claim for fraudulent misrepresentation is **DISMISSED WITHOUT PREJUDICE** and may be reasserted if Defendants Ellis and CCLLC meet the requirements of Rule 9(b).

5. Plaintiffs' Motion to Dismiss (Doc. # 118) is **DENIED** as **MOOT** with respect to the breach of contract and breach of warranty deed claims against Plaintiff Wiggins and the breach of guaranty claim against Plaintiff Wolf Pup.

6. Plaintiffs' Motion to Dismiss (Doc. # 118) is **DENIED** as to Defendant Ellis's breach of contract claim against Plaintiff Wolf Pup, his breach of guaranty claim against Plaintiff Wiggins, and Defendant CCLLC's breach of warranty deed claim against Plaintiff Wolf Pup. These three claims **MAY** proceed.

DONE and **ORDERED** this February 14, 2017.



R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE